

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1, 3, 4, 6, 8-10, 12, 14-28, and 34-45 are pending in this application. By this Amendment, claims 1, 36, and 45 are amended. No new matter is added. Claims 1, 36 and 45 are the independent claims.

**Claim Rejections - 35 U.S.C. § 102**

Claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, 41, and 42 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,876,749 to Killion et al. ("the Killion reference"). Applicants respectfully traverse this rejection for the reasons discussed below.

Applicants respectfully submit that the Killion reference fails to disclose, or even suggest, *inter alia*:

the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user without affecting a configuration of **any** of the one or more sound inlet ports, **any** of the one or more channels and **any** path the sound will follow from the one or more sound inlet ports to the one or more microphones. (emphasis added)

In particular, Applicants respectfully submit that the Killion reference fails to disclose or suggest that "**any**" of the one or more sound inlet ports, the one or more channels and sound paths, will be affected when the one or more electrical control devices is operated, as taught by claim 1.

In the outstanding Office Action, the Examiner contends that the sound path through the channel 7, 11 in the Killion reference is apparently believed to be unaffected by the switch 10 being operated – see page 7, paragraph 5 in the August 3,

*2010 Office Action.* Specifically, in the Killion reference, there are two sound inlet ports (i.e., the front sound inlet port 7 and the rear sound inlet port 13) and the actuator switch 10 can be operated by the user to cover or uncover the opening of, e.g., the rear sound inlet tube 13. Accordingly, the sound inlet tube 11 and its sound inlet opening are unaffected only in the sense that the sound inlet opening is not covered. However, it is respectfully submitted that in its two positions the actuator switch 10 will inevitably have different effects on the acoustic properties not only of the sound inlet tube 13 but definitely also of the other sound inlet tube 11. For instance, in the position shown in dotted lines, the actuator switch 10 has an end surface aligned with an inner wall of the sound inlet tube 11 and is thus clearly in the acoustical near-field of the sound inlet port of the sound inlet tube 11. Further, this will also clearly affect the acoustical properties of the sound inlet tube 11 different from what will be the case when the actuator switch 10 is in the position shown in solid lines where its distance from the sound inlet opening of the sound inlet tube 11 is about two times the diameter of the sound inlet tube 11. Therefore, the Killion reference fails to disclose or suggest that the one or more electrical controlling devices operate **without affecting** a configuration of **any** of the one or more sound inlet ports, **any** of the one or more channels and **any** sound paths, as taught by claim 1.

Moreover, due to the sliding action of the switch 10, it is respectfully submitted that the sound will be affected from the inlet ports to the microphones, which clearly changes the acoustical properties.

Accordingly, the Killion reference fails to disclose or suggest, *inter alia*, "the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user without affecting a configuration of any of the one or more sound inlet ports, any of the one or more channels and any path the sound will

follow from the one or more sound inlet ports to the one or more microphones,” as recited in amended claim 1.

Therefore, contrary to the Examiner’s contention, the Killion reference does not disclose or suggest each and every element of claim 1.

Since the Killion reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(e) and, thus, is allowable. Claims 3, 4, 6, 8-10, 12, 17, and 34, depend from amended claim 1 and, therefore, allowable for similar reasons to those discussed above with respect to claim 1.

Claim 36 is allowable for the similar reasons presented above in regard to claim 1. For instance, claim 36 recites, *inter alia*, “an electrical controlling device forming at least part of the sound inlet port, the electrical controlling device being operable by a user for selectively controlling operation of the microphone assembly and without affecting **any** path the sound will follow from the sound inlet port to the microphone housing,” as recited in amended claim 36.

Claims 37-39, 41, and 42, depend from amended claim 36 and, therefore, allowable for similar reasons to those discussed above with respect to claim 36.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 102(e) rejection of claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, 41, and 42.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 9, 12, 40 and 43-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Killion. Applicants respectfully traverse this rejection for the reasons discussed below.

Claims 9, 12, 40, 43, and 44 are believed to be allowable for at least the reasons set forth above regarding claims 1 or 36. Since claims 9, 12, 40, 43, and 44 are patentable at least by virtue of their dependency on claims 1 or 36, Applicants respectfully request that the rejection of claims 9, 12, 40, 43, and 44 under 35 U.S.C. § 103(a) be withdrawn.

Further, claim 45 is allowable for the similar reasons presented above in regard to claims 1 or 36. For instance, claim 45 recites, *inter alia*, “the microphone assembly having a sound inlet port, and an electrical controlling device that can be operated by a user for selectively controlling the operation of the assembly and without affecting any path a sound will follow from the sound inlet port to the assembly, said sound inlet port and said electrical controlling device being combined to form an integrated microphone assembly, wherein the electrical controlling device forms part of the sound inlet port, and wherein the electrical controlling device includes a user operable actuator having a generally rounded outer configuration.”

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 103(a) rejection of claims 9, 12, 40 and 43-45.

#### **Request for Interview**

Applicants respectfully request, prior to the issuance of an action on the merits, that the Examiner grant an interview (telephonic or in-person) with Applicants' representative in order to discuss the Office Action, and the differences between the cited prior art and the subject matter cited in the claims.

Applicants' representative will telephone the Examiner in the near future in an attempt to schedule this personal interview. However, as Applicants' representative cannot anticipate when this action will be scheduled for further action by the Examiner, it is requested that the Examiner contact Applicants' representative by telephone, at the number given below should a specific date for the interview have not been scheduled when the Examiner takes this action up for further action. Every effort will be made to meet the Examiner's scheduling preference.

### **CONCLUSION**

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

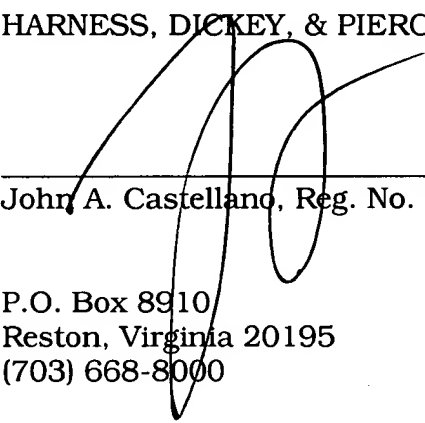
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

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